

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1188

September Term, 2024

EPA-89FR32532

Filed On: December 10, 2024

American Water Works Association and
Association of Metropolitan Water Agencies,

Petitioners

v.

Environmental Protection Agency and
Michael S. Regan, in his official capacity as
Administrator, United States Environmental
Protection Agency,

Respondents

Concerned Citizens of WMEL Water
Authority Grassroots, et al.,
Intervenors

Consolidated with 24-1191, 24-1192

BEFORE: Katsas, Childs, and Garcia, Circuit Judges

PROTECTIVE ORDER

The following Protective Order shall apply to these petitions, Nos. 24-1188, 24-1191, and 24-1192 (hereafter referred to as "the action"). It shall govern the production, use, and submission of Protected Information in the course of this action and preclude use of such information for purposes other than this action, except as authorized by law or in accordance with this Protective Order.

1. **"Protected Information" Defined:** "Protected Information" shall include any material or words in the Administrative Record with rights that may be protected under the U.S. Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541, codified, as amended, at Title 17 of the U.S. Code. Protected Information that is or becomes publicly available in a manner that does not violate this Protective Order or other relevant confidentiality requirements shall not constitute Protected Information, and to the extent a party obtains information outside the context of this action by means other

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than through a violation of this Protective Order or other confidentiality requirement, that party shall not be limited in its use of such information by this Protective Order.

2. The Administrative Record: In accordance with and subject to the protections of this Order, upon request by any of the parties in this action, Respondents the U.S. Environmental Protection Agency et al. (“EPA”) shall provide to all parties any documents in the Administrative Record for the rulemaking challenged in this action that are claimed to contain Protected Information. Because of the burdens and delay associated with a comprehensive page-by-page review for specific Protected Information in the Administrative Record, the entirety of a document or other material identified as containing Protected Information in the Administrative Record shall be treated as containing Protected Information unless specifically designated otherwise. When transmitting any documents containing Protected Information to the other parties, EPA shall ensure that any email, electronic file transfer folder, or other medium for transmitting the documents is clearly marked with words to the effect of “Copyrighted Documents.”

3. Disclosure and Use of Protected Information:

a. Disclosure and use of any Protected Information subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this action and shall not be used by any party for any business, commercial, competitive, or other purpose. This Protective Order, however, does not restrict the disclosure or use of any Protected Information lawfully obtained by the receiving party through means or sources outside of this action. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this action. Nothing in this Protective Order shall limit the use by a party of its own Protected Information or prevent a party from disclosing its own Protected Information to any person, except that employees of the United States remain bound by any relevant statutory or regulatory restrictions regarding disclosure of information.

b. Disclosure and use of any Protected Information, including all information derived therefrom, shall be restricted solely to the following persons, who agree to be bound by the terms of this Protective Order, unless additional persons are stipulated by counsel or authorized by the Court:

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- (i) Outside counsel of record for the parties, and other attorneys and administrative staff performing work on this action within outside counsel's firms or law office;
- (ii) In-house counsel for the parties, and the administrative staff for each in-house counsel;
- (iii) Any party to this action who is an individual, and every employee, director, officer, manager, or designated representative of any party to this action who is not an individual, but only to the extent necessary to further the interest of the parties in this action;
- (iv) The Court and its personnel, including, but not limited to, stenographic reporters regularly employed by the Court and stenographic reporters not regularly employed by the Court who are engaged by the Court or the parties during the litigation of this action;
- (v) The authors and original recipients of the documents;
- (vi) Employees of copy services, microfilming or database services, brief printing and delivery services, trial support firms and/or translators who are engaged by the parties during the litigation of this action;

c. Any party receiving Protected Information pursuant to this Order is responsible for ensuring that any person listed under Paragraph 3(b) with whom the party shares Protected Information abides by the terms of this order.

4. Return or Destruction of Protected Information: Within 90 days after the mandate in this action issues, the parties shall destroy or return to counsel for the producing party all Protected Information, including all copies thereof, provided that counsel of record for each party may maintain a copy of any briefs, appendices, or excerpts of record, or other material filed with or presented to the Court in this action.

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5. The restrictions on disclosure and use of Protected Information shall survive the conclusion of this action. This Court shall retain jurisdiction of this action after its conclusion for the purpose of enforcing the terms of this Protective Order.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk